

MINUTES
of the
LEGISLATIVE CONSUMER COMMITTEE
May 1, 2008
State Capitol, Room 335, Helena, MT

COMMITTEE MEMBERS PRESENT

Representative George Groesbeck, Chairman
Representative Walter McNutt, Vice Chairman
Senator Joe Tropila
Senator Terry Murphy

STAFF PRESENT

Robert A. Nelson, Consumer Counsel
Larry Nordell, Economist
Mary Wright, Attorney
Mandi Shulund, Secretary

VISITORS PRESENT

John Fitzpatrick, NorthWestern Energy
John Hines, NorthWestern Energy
Don Quander, Holland and Hart

CALL TO ORDER

The meeting was called to order by Representative Groesbeck.

MINUTES OF THE PREVIOUS MEETING

MOTION: Senator Tropila moved approval of the February 15, 2008 meeting minutes.

VOTE: The motion passed unanimously.

BOB NELSON PROVIDED THE FOLLOWING HIGHLIGHTS OF CASES

CURRENTLY PENDING:

NorthWestern Energy

D2007.7.82-Application for Increased Gas and Electric Delivery Service Rates: NWE had requested increases of \$10.4 million for gas and \$31.4 million for electric, relating only to delivery service. A stipulation between MCC and NWE was filed with the Commission on 12/7/07 providing for a \$10 million electric increase and a \$5 million gas increase and was put into effect 1/1/08 by an Interim Order. Also agreed upon was a rate base deduction and a purchase from Colstrip 4 for power at Mid-C minus \$19/Mwh. A significant part of the agreement was that NWE would file rate case information by 7/31/09 using 2008 as a test year. NRDC and CELP filed comments opposing the approval of the stipulation. A hearing in this case was held on 3/31/08. Initial briefs are due 5/2/08 and final briefs are due 5/23/08.

D2007.7.82 Phase II-Application for Increased Gas and Electric Delivery Service Rates: This application is Phase II of the previous case. Phase I dealt with revenue requirements and Phase II, filed 3/31/08, addresses the allocation of those revenue requirements. With interim rates in place as a base and due to the cost allocation and rate design proposals, Phase I, if adopted, would result in a residential rate increase of just over 5% for general service. In Phase II, the rate design generally proposes to shift cost away from commodity charges to fixed charges or, in other words, primarily customer charges. A hearing is scheduled for 2/25/09.

MCC v FERC, Petition for Review of FERC Order-Docket Nos. 07-73256 and 07-73547 Ninth Circuit Court of Appeals: This case relates to PPLM issues and has

been fully briefed. MCC has inquired with the court as to when the case might be set for oral argument and due to the caseload in the Ninth Circuit, the initial indication was possibly a year and a half away. MCC has filed a joint motion for expedition with the PSC and REC in Butte.

MBR-FERC Docket RM04-07: FERC initiated this docket for further rulemaking to help determine standards for reviewing requests for market based rate authority for wholesale sales. Because FERC is considering basically the same issues MCC raised in the previous case, MCC raised those same issues in comments and request for hearing. On 4/21/08 FERC issued a Rehearing Order confirming the standards they had previously adopted and had set forth in the previous case. FERC continues to apply the market tests they had previously developed so they will review historic spot market information even in instances where long term forward contracts are being evaluated. However, FERC did agree to allow parties to present their cases and would consider evidence on a case by case basis. FERC continues to allow deductions by sellers for long term contracts, for example, when FERC looks at PPLM's market share to determine how much of the market they control, the amount of the contracts already committed to NWE is deducted even though that may be the very power NWE is trying to contract for. This does not make sense to MCC and a Notice of Appeal in the Ninth Circuit of Appeals was filed on 4/30/08. MCC believes that other appeals will be filed and all appeals will then be put into a lottery to determine which circuit court will hear the appeal. MCC would prefer the Ninth Circuit.

D2008.4.36-Petition of MCC for Investigation: This case involves the limitation on investments that NWE is allowed to make in non-regulated activities, which was a concern before and during the bankruptcy, so limitations were put in place as a result of resolving the bankruptcy case. It appeared to MCC that NWE had used more financing than was permitted under the consent decree to engage in the purchase of the Colstrip 4 interest. Also, while making that determination, an issue arose regarding an adjustment mechanism for the investment cap and what the

exact level of that cap was. NWE opposed MCC's petition and MCC responded to NWE on 3/10/08. The Commission initiated an investigation on 4/15/08 and a hearing is scheduled for 9/24/08. This case mainly relates to NWE's acquisition of the remaining interest in Colstrip 4. Representative Groesbeck asked, regarding HB25 from the 2007 legislative session, how NWE was working to ensure that the rate payers' best interest was a priority and was being taken care of. John Fitzpatrick from NWE suggested that Representative Groesbeck refer his questions and concerns to Senior Management of NorthWestern Energy and Bob added that MCC has tried to work with NWE to get through the bankruptcy and build a solid utility which is one of the considerations for the stipulation in the rate case discussed earlier. Senator Murphy asked if NWE, in any way, had ownership interests in the coal in Colstrip 4. Bob thought they had sold them all to Westmorland and no longer had any ownership interests.

FERC Docket No. EC08-26-Request for Authorization pursuant to FPA 2003 to transfer ownership Interest in C4: This is a FERC docket relating to the previous case. NWE is requesting FERC authorization to transfer the ownership interests, acquired using this financing, to a subsidiary affiliate. MCC was not aware of this filing but has since filed a Petition for Late Intervention asking FERC to dismiss the filing based on the Montana Commission's jurisdiction to enforce the bankruptcy Consent Order. FERC issued a Deficiency letter on 4/9/08 with responses due 5/9/08.

N2007.11.138-2007 Electric Default Supply Resource Planning and Procurement Plan: Commission rules require the company to file these plans every two years, which review the company's projections regarding resource needs and how to fulfill those needs. MCC filed comments on 3/14/08 stating that NWE focused too heavily on carbon risks and ignored other risks such as market risks from staying in shorter term markets. A hearing was held on 4/16/08 and the Commission will issue comments since no actual approval is given on these generic resource procurement plans.

D2008.4.35-Investigation of NWE's Contracting Procedures Related to New QF's:

The Commission issued Order 6905 initiating this investigation on 4/15/08 and MCC intervened on 4/24/08. A 50 mw limit was set by the Commission for new QF's choosing the long term standard rate option and the Commission believes that NWE has established an unauthorized queue to determine which QF's will receive contracts pursuant to that limit. NWE responded on 4/28/08.

N2008.4.41 Stimson Lumber Request for Return to Default Supply: MCC is

reviewing this request that was filed on 4/22/08. The general standard for requests like these for large customers like Stimson to return is that there are no substantial negative effects on the remaining default supply customers.

D2007.12.152-Petition of Two Dot Wind: Two Dot Wind is a QF developer seeking to set terms for existing QF small power production. Two Dot currently has six sites totaling 4 megawatts of capacity and claim they were unable to reach an agreement with NWE for a QF contract. An issue MCC felt was particularly important was that Two Dot said they did not need to pay integration costs. On 1/23/08 Larry Nordell filed testimony on MCC's behalf stating that integration costs were imposed by Two Dot. Larry proposed a method for calculating those costs and recommended they be adjusted annually so the risk of being above or below isn't shifted to rate payers. The Commission held a hearing on 3/6/08 and issued Final Order 6886a on 4/23/08. The order stated the Commission does support wind resources but believes the production characteristics of those resources must be considered in developing PURPA rates, which is a same point Larry made in his testimony. The Commission established both an annually adjustable and a fixed long term integration charge, allowing Two Dot to choose. Also in Final Order 6886a, the Commission calculated load variability assignable to Two Dot relative to other wind resources of \$5.18/MWh for 2008 and \$5.65/MWh for long term rates based on gas resource cost estimates.

LARRY NORDELL PROVIDED A DISCUSSION OF WIND POWER:

Larry began by stating that an analyst from BPA argued in the Judith Gap case integration would be somewhere in the \$2.00-\$5.00 range per megawatt hour of wind power. MCC had asked the Commission to place a \$9.00 cap on the amount of customer responsibility for shaping costs but the Commission declined. When Judith Gap was operational, NWE had to purchase additional regulating reserves and with that market being very tight, current contracts only allowed short term one year renewals and that price is increasing. Larry believed the price last year to be about \$6.75 with the current price being \$7.40 which is still relatively cheap. Judith Gap recently offered NWE a first refusal on a build out of the project and since Judith Gap was built, orders for wind turbines have increased and manufacturers are enjoying a sellers market. NWE turned down that offer for a few reasons including the tight market for shaping costs, the uncertainty of future supplies of regulating reserves and their upcoming purchase of non discretionary QF and community wind projects. NWE is currently buying regulating reserves on short term contracts but a solution being looked at is for them to build a gas turbine which would be a resource with enough flexibility to provide regulation services. Larry estimated a cost of around \$1000 per KWh to build a gas turbine. Senator Murphy asked Larry how solar compared, on a fairly large scale, to wind in terms of availability, dependability and cost. Larry said there is not enough experience to put together the cost of operating characteristics but someday solar power may hold a lot of promise. John Hines of NorthWestern Energy added that solar poses some benefits compared to wind because of flatter production but cloud cover and nighttime would be obstacles. John Fitzpatrick of NorthWestern Energy said that although wind energy carries potential in Montana there are significant issues with integrating wind into the operation of a small utility. Discussions have begun and revised legislation on this issue for the 2009 session is a possibility. One issue with wind production is there is a requirement under the Renewable Portfolio Act to take power from the facility and also to buy renewable energy credits, which would mean two payments. The current situation is that many developers have lined up for QF contracts and NWE is

obligated by the Commission to take 50 megawatts right away. At the same time, NWE has been advised by many of these developers that they have entered into agreements to sell the renewable energy credits so NWE could take the power but would not get that credit and it would not count toward compliance with the renewable portfolio. The requirement for community renewables, or basically community based wind, is about 45 megawatts by 2010 with the ultimate requirement being 70 by 2015. Another problem area is biomass. A 5 megawatt biomass generator is a very expensive capital proposition but NWE feels it is a resource not getting enough attention and perhaps some day it will be brought before the legislature. Representative Groesbeck asked Larry how, based on projected wind prices, wind prices compare to the current cost of regulating reserves with coal and have any discussions taken place or any analysis been done along these lines. Larry said that because a coal plant can not be ramped up and down fast enough to provide regulating reserves, the technology is inappropriate and would cause problems with any big steam generator to try to do this. Larry did not have any current estimates on coal but the carbon cost or carbon problem for coal is considerably greater than it is for gas.

D2007.7.80-Monthly Electric Tracker: The March Electric Tracker filed 2/14/08 resulted in a residential rate increase to \$.058009/kwh (.72%); The April Electric Tracker filed 3/14/08 resulted in a residential rate increase to \$.061401/kwh (5.85%); The May Electric Tracker filed 4/15/08 resulted in a residential rate decrease to \$.061051/kwh (.57%).

D2006.7.81-Monthly Gas Tracker: The March Gas Tracker filed 2/14/08 resulted in a residential rate increase to \$11.56; The April Gas Tracker filed 3/14/08 resulted in a residential rate increase to \$11.77; The May Gas Tracker filed 4/15/08 resulted in a residential rate increase to \$12.42.

Bob handed out an updated chart showing monthly tracker rates consumers are paying in terms of the commodity portion of the bill. There is a lot of fluctuation,

especially for MDU, but the general trend shows prices going back up to where they were a few years ago.

Montana Dakota Utilities

D2007.7.79-Application for Increased Electric Rates: Filed on 7/12/07, this is the first general application MDU has filed in many years. MCC participated in discussions with MDU and Encore, another intervenor, resulting in a settlement agreement filed with the Commission on 2/8/08. On 4/23/08 the Commission issued Final Order 6846f adopting that stipulation and by doing so, MDU is required to file another allocated cost of service and rate design case within a year. The Commission listed several items they wanted considered in that case, including externalities, inverted block rate design, a cost benefit study for time of use metering and recommendations for decoupling, all issues the Commission has been interested in pursuing with all of the utilities. MCC has always opposed decoupling and has concerns about how time of use metering might be implemented.

D2007.9.107 Monthly Gas Trackers: The April monthly tracker filed 3/10/08 resulted in a decrease of \$0.84/dk showing current gas costs of \$10.11/dk; The May monthly tracker filed 4/10/08 resulted in an increase of \$0.45/dk showing current gas costs of \$10.53/dk.

D2006.1.2-Investigation and Direction on Electric and Natural Gas USB: MCC entered into a stipulation with DPHHS, AARP and Energy Share in this case on 4/10/08. The stipulation, if approved, would cover years 2008-2010 and provide the allocation of the funding of various programs. One of the overriding features is that there would be no increase in USB charges so the stipulation would fall within the currently approved USB surcharge levels.

D2008.3.30-Conservation Tracker Adjustment: Last year the Commission adopted a conservation tracker for MDU so they can reflect changes in their conservation

investment and lost loads calculated as a result of those investments. Currently the charge is quite small and MDU is proposing a slight decrease in that charge.

Energy West

D2008.3.27-Joint Application of Energy West and Cut Bank Gas Company for Approval of Acquisition of Cut Bank Gas by Energy West Montana: EWM is proposing to acquire Cut Bank Gas through a stock purchase agreement entered into 12/07. EWM asserts there will be net benefits to customers from operating efficiencies and capitol improvements, improvements to billing systems and potential gas cost reductions. The purchase price is \$970,000 with the bulk of that being paid through a stock exchange with a \$370,000 non-compete payment to Dan Whetstone. They are requesting a 5 year non-gas cost rate freeze and are proposing to transfer 12 gas wells, currently in the rate base of Cut Bank Gas, to unregulated operation for a \$41,000 reduction in purchase payment. MCC has filed discovery and a hearing is set for 8/27/08.

D2007.7.75-EWM Monthly Gas Trackers: The April Gas Tracker filed 3/10/08 resulted in a residential rate increase to \$11.15 Mcf; The May Gas Tracker filed 4/8/08 resulted in a residential rate increase to \$11.21 Mcf.

Williston Basin Interstate Pipeline

WBIP v. FERC, U.S. Court of Appeals, D.C. Circuit, No. 06-1145-Appeal of Order in FERC No. RP00-107-003: This case goes back to a General Rate Case that Williston Basin filed in 2000 that MCC participated in. One facet of that case was that Northern State Power (NSP) asked FERC to convert a gas transportation rate that they had from Williston Basin. Williston Basin had built a pipeline to serve NSP and a contract was in place with specific charges for that service and to the extent that NSP did not use that pipeline capacity, Williston was able to sell the excess capacity with revenues being credited to Williston Basin customers, largely to MDU and MDU customers, is why MCC was interested in this case. FERC issued an order

stating that NSP owned rights to resell the capacity even though the contract gave Williston Basin those rights. The net effect was that rate payers did not get the revenue credits from the resale of that capacity so Williston Basin challenged FERC's interference in their contracts. MCC intervened on behalf of Williston Basin because MCC had supported them in the rate case on this issue. The Circuit Court issued a decision on 3/18/08 remanding its decision to FERC stating FERC had acted arbitrarily and capriciously and had not explained the potential loss of benefits to Williston Basin. This is a partial victory because it was remanded but not vacated and the court indicated that FERC may be able to explain their actions.

MARY WRIGHT PROVIDED THE FOLLOWING HIGHLIGHTS OF TELECOM CASES CURRENTLY PENDING:

Eligible Telecommunications Carrier Cases

D2004.1.6 - Triangle Communications Systems, Inc.: The Commission issued Final Order 6723b over a year ago but MTA has challenged part of the determination with the FCC.

D2007.2.18-MTPCS, LLC d/b/a/Chinook Wireless: The Commission issued Final Order 6812d on 4/18/08 granting ETC status to Chinook Wireless, which is now Cellular One. MTA recently filed for reconsideration of that order.

D2003.1.14-Alltel Communications, Inc.: Alltel Communications was granted ETC status years ago when it was still Western Wireless but the Commission staff does not feel they are fulfilling its obligations as an ETC, specifically that its build-out has not made sufficient progress for compliance with the Commission order.

Qwest

D2005.6.105-PSC Investigation into Qwest's use of USB Funds:

Cause No. CDV 2003-464 - Qwest v. PSC and MCC:

D2006.10.143-Doty et al. v. Qwest Corporation:

D2008.1.6-PSC Investigation of Qwest Corporation Regarding the Justness and Reasonableness of Rates, Schedules and Terms and Conditions of Service:

These cases are now tied together. A settlement with and a proposal from Qwest for an Alternate Form of Regulation (AFOR), if approved by the Commission, would give Qwest a reduced level of regulation in exchange for a price cap program for customers for the next 5 years. Included under the price cap are minimum reductions in residential rates of \$2 per month with some business lines receiving a reduction of almost \$4 per month, but all customers should receive a benefit of some kind. These rate reductions settled D2006.10.143-Doty et al. v. Qwest Corporation and Qwest has agreed to treat all federal USB payments going forward as reduction to rate base for its customer contributed capital, which resolved D2005.6.105-PSC Investigation into Qwest's use of USB Funds.

D2008.2.17-Public Service Commission Investigation of Qwest Corporation's Apparent Noncompliance with Order No. 5535g in Docket No. 90.12.86: This case is an additional investigation of Qwest. Years ago Qwest was awarded a certain level of money in rates annually to support their other post employment benefits, including medical and dental for retirees. Qwest was supposed to maintain these programs and were to report to the Commission if any cancelations in programs were made. Qwest did take away some benefits from retirees but argue that is not the same as termination of a program.

D2007.10.124-3 Rivers Petition for Arbitration for Interconnection Agreement with Alltel Communications: This arbitration was created in order for the Commission to basically establish the fee that 3 Rivers would be able to charge Alltel for calls that terminate in 3 Rivers service area. MCC is monitoring this case.

D2008.1.3- Ronan and Hot Springs Telephone Complaint: Ronan Telephone Company and Hot Springs Telephone Company filed this case in Federal District court in Missoula hoping the court will agree with the proposition that Qwest should

pay termination charges when traffic is delivered to Ronan and Hot Springs by Qwest anytime calls are originated from a different carrier. The context of this case is that the Federal Court asked the Commission to answer some questions under the doctrine of primary jurisdiction. The Commission decided they did have jurisdiction to consider those questions and will now go into a more substantive phase of the case. Representative McNutt asked whether rural carriers applying for ETC status for mobile phone service must have roaming agreements or the ability to access that mobile phone system in order to be an ETC, because there is an inability to call 911 from many places. Mary said there is no positive requirement making all technologies compatible but MCC has filed testimony on this issue under the ultimate public interest standard.

FINANCIAL REPORT

The April report and supplemental information regarding the contracted services budget was presented to the Committee. Bob does not see any problems with the budget but wanted to discuss contracted services. This is the biggest part of the budget and so far seems to be running pretty far ahead due to the heavy caseload this year. Bob noted that there probably is a bit of a cushion in the budget so no problems are anticipated at the end of the year. Representative Groesbeck said he appreciated the work that MCC does, especially lately in terms of the Qwest settlement, and felt that people do not understand who the Consumer Committee or the Montana Consumer Counsel are and said it might be a good idea to place a write-up in the newspapers about the committee and the MCC office. Representative Groesbeck said he will discuss this idea with the committee members and with Bob.

HIRING OF EXPERT WITNESSES

MOTION: Representative McNutt moved approval to hire the services of the following expert witnesses:

D2008.4.36 Investigation of NorthWestern Corporation's Compliance with Order No. 6505e-John Coyle and John Wilson

D2008.3.27 Energy West Incorporated and Cut Bank Gas Company for Approval of the Acquisition of Cut Bank Gas Company by Energy West Incorporated-George Donkin

D2008.2.17 Public Service Commission Investigation of Qwest Corporation Apparent Noncompliance with Order 5535g in Docket No. 90.12.86 Related to Other Post-Employment Benefits-Al Buckalew

D2008.1.3 Ronan Telephone Company and Hot Springs Telephone Company vs Qwest Corporation-Al Buckalew

VOTE: The motion passed unanimously.

Public Comments

Based on HB94 requirements, a public comment period was offered, but none was given.

Adjournment

There being no further business to come before the Committee, the meeting adjourned.

Respectfully submitted,

_____, Robert Nelson, Consumer Counsel

Accepted by the Committee this _____ day of _____, 2008

_____, Chairman.